

The Vermont Statutes Online

Title 6: Agriculture

Chapter 87: CONTROL OF PESTICIDES

§ 1101. Definitions

As used in this chapter unless the context clearly requires otherwise:

- (1) "Secretary" shall have the meaning stated in section 911(18) of this title.
 - (2) "Cumulative" when used in reference to a substance means that the substance so designated has been demonstrated to increase twofold or more in concentration if ingested or absorbed by successive life forms;
 - (3) "Dealer or pesticide dealer" means any person who regularly sells pesticides in the course of business, but not including a casual sale;
 - (4) "Economic poison" shall have the meaning stated in section 911(5) of this title;
 - (5) "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms, which the secretary declares as being injurious to health or environment. Pest shall not mean any viruses, bacteria or other micro-organisms on or in living man or other living animals;
 - (6) "Pesticide" for the purposes of this chapter shall be used interchangeably with "economic poison";
- (1) "Secretary" shall have the meaning stated in section 911(18) of this title. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1975, No. 39, § 2; 1987, No. 71, § 3; 2003, No. 42, § 2.)

§ 1102. Pesticide advisory council established

(a) The pesticide advisory council is established and attached to the agency of agriculture, food and markets. Members of the council, except those public members appointed by the governor, shall be qualified individuals who, by experience and training, are knowledgeable in one or more areas associated with pest control. The secretary, or commissioner as the case may be, shall represent each department or agency on the council:

- (1) The fish and wildlife department;
 - (2) The department of environmental conservation;
 - (3) The agency of agriculture, food and markets;
 - (4) The department of forests, parks and recreation;
 - (5) The department of health;
 - (6) The agency of transportation;
 - (7) One physician from the College of Medicine of the University of Vermont nominated by its dean;
 - (8) One representative in the area of entomology, plant pathology or weed control from the University of Vermont Extension Service to be named by the director;
 - (9) One representative in the area of pesticide research from the Vermont Agricultural Experiment Station named by the dean of the College of Agriculture and Life Sciences of the University of Vermont; and
 - (10) Two members appointed by the governor. In choosing these members, the governor shall consider people who have knowledge and qualities that could be useful in pursuing the goals and functions of the council. One of these members shall have practical experience in commercial agricultural production and shall be appointed in consultation with the secretary.
- (b) Each state or university member of the council shall serve until his or her resignation or until his or her successor is appointed or otherwise designated in accordance with this chapter. Public members of the pesticide advisory council shall be appointed for terms of three years, except initially, appointments shall be made such that one member shall serve for a term of one year and one for a term of two years.
- (c) The chair of the council shall be designated by the governor and serve as his or her personal representative, and shall coordinate activities on the council.
- (d) The functions of the council are:
- (1) To review insect, plant disease, weed, nematode, rodent, noxious wildlife, and other pest control programs within the state and to assess the effect of such programs on human health and comfort, natural resources, water, wildlife, and food and fibre production, and where necessary make recommendations for greater safety and efficiency.
 - (2) To serve as the advisory group to state agencies having responsibilities for the use of pesticides as well as to other state agencies and departments.

(3) To advise the executive branch of state government with respect to legislation concerning the use of various pest control measures.

(4) To suggest programs, policies, and legislation for wise and effective pesticide use that lead to an overall reduction in the use of pesticides in Vermont consistent with sound pest or vegetative management practices.

(5) To prepare annually or more frequently as deemed necessary, a summary of pesticides which because of their hazardous characteristics or properties warrant special surveillance and stricter control of availability and use.

(6) To recommend studies necessary for the performance of its functions as established under this section.

(7) To recommend benchmarks with respect to the state goal of achieving an overall reduction in the use of pesticides consistent with sound pest or vegetative management practices, and to issue an annual report to the general assembly, detailing the state's progress in reaching those benchmarks and attaining that goal. The benchmarks should be designed to enable evaluation of multiple indicators of pesticide usage, use patterns, and associated risks. Benchmarks should take into consideration, but shall not be limited to, the following:

(A) Reducing the amount of acreage where pesticides are used.

(B) Reducing the risks associated with the use of pesticides.

(C) Increasing the acreage managed by means of integrated pest management techniques.

(D) Decreasing, within each level of comparable risk, the quantity of pesticides applied per acre.

(E) Recommendations regarding the implementation of other management practices that result in decreased pesticide use.

(e) The council shall meet semiannually, once in the fall and once in the spring. Meetings at other times may be called by the governor, by the chair or by a member of the council. Attendance at council meetings shall not be required of the commissioners of departments within the agency of natural resources, or their designees; however, at least one of these commissioners, or the commissioner's designee, shall attend each meeting of the council. Council proceedings shall be open to the public and its deliberations shall be recorded and made available to the public, along with its work product. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1987, No. 71, § 4; No. 76, § 18; 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1991, No. 79, § 4; 1995, No. 189 (Adj. Sess.), § 1; 1999, No. 141 (Adj. Sess.), § 1; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1103. Regulation by secretary

(a) General authority. The secretary shall have responsibility for regulating and controlling the sale, use, storage, treatment and disposal of pesticides and pesticide wastes, in order to promote the public health, safety and welfare and protect agricultural and natural resources. In the performance of such duties the secretary shall act upon the advice of the pesticide advisory council, and subject to the approval of the governor.

(b) Management program. By January 1, 1993, the secretary, in conjunction with the committee described in this section, shall make recommendations to the Vermont legislature regarding a management program for unwanted, obsolete and waste quantities of pesticides. These recommendations shall be of a nature that, if implemented, will provide for the proper management of these pesticides and address all pesticides sold into the state of Vermont. These recommendations shall include recommendations for funding.

(c) Management program committee. The committee convened by the secretary to make the recommendations required under this section shall be composed of at least the following members, appointed by the secretary:

- (1) a representative from the agency of natural resources;
- (2) a representative from a regional planning commission;
- (3) a representative from a farmer group;
- (4) a representative from an environmental group;
- (5) a representative from the manufacturers of pesticides;
- (6) a representative from a retail sales association;
- (7) a representative from the department of health;
- (8) a representative of the general public.

(d) Management program recommendations. Recommendations for the program indicated above shall include, at least, recommendations related to the following:

- (1) responsibility of manufacturers of pesticides;
- (2) responsibility of retailers and wholesalers;
- (3) responsibility of consumers;
- (4) responsibility of government;

- (5) public education efforts to inform consumers;
- (6) efforts to prioritize collection of pesticides;
- (7) efforts to divert pesticides from the municipal waste stream;
- (8) opportunities to use up pesticides in the possession of consumers;
- (9) funding of all program elements;
- (10) identification of characteristics of pesticides which should be banned from landfill disposal;
- (11) date at which pesticides should be banned from landfill disposal. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1981, No. 53, § 1; 1991, No. 210 (Adj. Sess.), § 2; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1104. Powers of secretary

The secretary in furtherance of the purposes of this chapter may:

- (1) Regulate and license the display, sale, application, use, storage, treatment and disposal of economic poisons and their waste products and establish restrictions on the use, application, storage, treatment and disposal of economic poisons and their waste products which are deemed toxic or hazardous to man, animals, or the natural environment;
- (2) Examine, test and approve any apparatus or equipment used in dispensing, applying, storing, treating or disposing economic poisons or their waste products. Such equipment shall be in good working order, free of defective parts, and equipment used for applying economic poisons shall be capable of dispensing prescribed amounts of pesticides to the target without undue hazard to the operator or nontarget areas;
- (3) Adopt standards, procedures and requirements relating to the display, sale, use, application, treatment, storage or disposal of economic poisons or their waste products and limit the conditions under which the same may be sold, used, treated, stored or disposed of. The use of pesticides which the secretary finds to have a hazardous or long term deleterious effect on the environment shall be restricted, and permits shall be required for their use in accordance with regulations adopted by the secretary. Specific uses of certain pesticides deemed to be unwise or dangerous shall be restricted by regulation or by ordering the deletion of certain uses for registered pesticides from the label on pesticide products to be marketed in the state. Approved methods for the safe display, storage and shipping of poisonous pesticides shall be prescribed and enforced. Procedures for the disposal of pesticides which are illegal, obsolete, surplus or in damaged containers shall be adopted and enforced with the cooperation of the agency of natural resources;

(4) Enter any premises, public or private, as may be necessary to carry out the provisions of this chapter;

(5) Issue licenses, permits and certificates pursuant to this chapter;

(6) Require pesticide dealers and applicators to keep records of the sale and use of pesticides deemed particularly toxic or hazardous by the pesticide advisory council, and to have such records available for examination by the secretary or his agents at his request; the accounting for kinds and amounts of such economic poisons, to whom sold, where and when used, and the reporting of incidents resulting from accidental contamination or misapplication of pesticides which present a hazard to man, animals or the environment, may be required;

(7) [Repealed.]

(8) Revoke or suspend any license or certificate for failure to comply with this chapter or any rule or regulation adopted under its authority, or for being subject to a final order imposing a civil penalty under 7 U.S.C. section 136 l or for being convicted under 7 U.S.C. section 136 l on due notice to the licensee or holder of the certificate with an opportunity for hearing if a written request for hearing is filed with the secretary within five days of receipt of notice of a violation;

(9) Make, adopt, revise and amend reasonable rules and regulations as he deems necessary with the advice of the pesticide advisory council in order to carry out the provisions of this chapter;

(10) Appoint assistants, subject to applicable laws and regulations, to perform or assist in the performance of any duties or functions of the secretary under this chapter;

(11) Enter into reciprocal agreements with appropriate pesticide control agencies of other states or the federal government for the acceptance of licensing and certification of pesticide applicators and operators, provided their standards and administration are substantially equal to the standards established by the secretary under the provisions of this chapter and the regulations thereto;

(12) Cooperate fully with the federal government or other agency in the operation of any joint federal-state programs concerning the regulation of the application or use of pesticides, such programs including but not limited to the program promulgated by Public Law 92-516 of the 92nd Congress.

(13) Institute appropriate proceedings on behalf of the agency to enforce this chapter and any regulations duly promulgated thereunder. Whenever the secretary believes that any person is in violation of the provisions of this chapter or regulations adopted thereunder an action may be brought in the name of the agency in a court of competent jurisdiction against the person to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions

without bond, and other relief as may be necessary and appropriate for abatement of any violation.

(14) In any case in which the secretary has authority to institute an action or proceeding under this chapter, in lieu thereof he may accept an assurance of discontinuance of any violation of any of the statutes and regulations specified in this chapter including schedules of abatement for a violation. Any assurance of discontinuance shall be prepared in writing with the assistance of the attorney general. The assurance shall be signed by all parties, and at the discretion of the secretary the attorney general shall submit the assurance of discontinuance to the superior court having jurisdiction over the subject matter, and shall request that the presiding judge sign the document and issue it as an order of the court. Evidence of a violation of such assurance shall be prima facie proof of violation of a statute or regulation specified above as cited in the assurance. Prior to institution of any action or proceeding under this subdivision, the secretary whenever he believes any person to be or to have been in violation of any statute or regulation specified in this subdivision may issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and the notice of intention to institute an action or proceeding against the person responsible for the violation. In that event the secretary shall provide the person within 30 days of the notice an opportunity to be heard and an opportunity to settle the matter by an assurance to discontinue prior to instituting an action or proceeding as provided for in this subdivision.

(15) Require correction of sources of pesticide contamination that threaten human health or the environment.

(16) Conduct a collection program for obsolete and unwanted pesticides.

(17) Make information reported to the agency relative to the use of pesticides available to the public via the internet or in any other way deemed appropriate, and may allow the required reporting of pesticide use data to be submitted electronically. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1975, No. 39, § 3; 1975, No. 220 (Adj. Sess.), § 10; 1981, No. 53, §§ 2, 4; 1987, No. 76, § 18; 1989, No. 257 (Adj. Sess.), § 8; 1991, No. 79, § 5; 1995, No. 125 (Adj. Sess.), § 3; 1999, No. 49, § 116(2); 1999, No. 141 (Adj. Sess.), § 3; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1105. Use and sale of DDT prohibited

No person shall sell, use or apply dichloro-diphenyl-trichloro-ethane, sometimes referred to as DDT, on or after December 31, 1971, except when the secretary certifies that an emergency exists which requires its use. When the secretary finds that an emergency exists and so certifies, he shall prescribe the conditions under which and the period for which it may be used. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1106. Financial responsibility

The secretary may require from a licensee or an applicant for a license under this chapter evidence of his financial ability to properly indemnify persons suffering damage from the use or application of economic poison, in the form of a surety bond, liability insurance or cash deposit, none of which shall exceed \$10,000.00, but this section shall neither restrict nor enlarge the liability of any person under applicable laws. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1107. Penalty

Any person who violates any provision of this chapter, the rules promulgated herein or the terms or conditions of any permit, license or certificate issued by the secretary, shall be subject to a fine not to exceed \$25,000.00 or imprisonment for not more than six months, or both. Each violation shall be a separate and distinct offense and, in the case of a continuing violation, the fine for each day's continuance thereof shall be increased by 10 percent over the amount accrued during the previous day starting from the day the violator is served with notice of the violation. The service shall be by hand or by certified mail, return receipt requested. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1981, No. 53, § 3; 1987, No. 71, § 6; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1108. Construction with other laws

The provisions of chapter 25 of Title 3 shall apply to adoption of rules, notices, hearings and other proceedings under this chapter unless inconsistent with its provisions. The powers granted to the secretary under this chapter shall not limit, restrict or suspend any similar powers the secretary may have under other provisions of law, and shall not limit or restrict any powers specifically granted to any other state agency. (Added 1969, No. 273 (Adj. Sess.), § 2, eff. April 9, 1970; amended 1991, No. 210 (Adj. Sess.), § 5; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1109. Licensing retail dealers

The secretary may adopt regulations requiring persons selling Class C pesticides at retail to be licensed under this chapter, and may establish reasonable requirements for obtaining licenses. The license fee for a retail dealer shall be \$20.00 for one year or any part thereof for each store or place of business operated by the retail dealer. The license period shall be January 1 to December 31. (Added 1971, No. 177 (Adj. Sess.), § 5, eff. Jan. 1, 1973; amended 1989, No. 257 (Adj. Sess.), § 9; 2001, No. 143 (Adj. Sess.), § 37; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1110. Pesticide monitoring

The secretary shall develop and implement a plan to monitor the use of pesticides registered in Vermont. The program shall include the cataloguing of available data and research conducted on the environmental and public health aspects of pesticides into a central information repository in order to facilitate public access to the accumulated information. The program shall be funded directly by a portion of the registration fee

provided for in 6 V.S.A. § 918(b). (Added 1985, No. 72, § 4; amended 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1111. Administrative penalties

(a) The secretary may assess an administrative penalty, not to exceed \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies or permit holders, in any case in which he or she determines that an applicator, dealer, licensed company or permit holder has done any of the following acts in violation of this chapter, or of the rules or regulations promulgated under this chapter:

- (1) sold pesticides without first obtaining the appropriate pesticide dealer license;
- (2) used pesticides without first obtaining the appropriate company license or applicator certificate;
- (3) used a pesticide inconsistent with its labeling or in violation of the rules for the control of pesticides;
- (4) failed to complete and submit a commercial applicator, company license or pesticide dealer report;
- (5) violated a cease and desist order;
- (6) improperly disposed of pesticide products, dilutions or rinsates; or
- (7) violated the terms or conditions of a permit issued pursuant to this chapter, or pursuant to the rules or regulations promulgated pursuant to this chapter.

(b) In determining the amount of the penalty assessed under this section, the secretary may give consideration to the appropriateness of the penalty with respect to the size of the business being assessed, the gravity of the violation, the good faith of the person and the overall history of prior violations.

(c) The secretary shall use the following procedure in assessing penalties:

- (1) he or she shall issue a written notice of violation setting forth facts that would establish probable cause that a violation has occurred;
- (2) the notice shall be served by personal service or by certified mail, return receipt requested;
- (3) the notice shall advise the person of the right to a hearing. If a hearing is requested, it shall be conducted pursuant to 3 V.S.A. chapter 25;

(4) the notice shall also state the proposed penalty and that if no hearing is requested, the decision shall become final and the penalty shall be imposed; and

(5) the recipient of the notice shall have 15 days from the date on which notice is received to request a hearing.

(d) Any party aggrieved by a final decision of the secretary may appeal to a superior court within 30 days of the final decision of the secretary. The secretary may enforce a final administrative penalty by filing a civil collection action in any district or superior court.

(e) The secretary may, subject to the provisions of 3 V.S.A. chapter 25, suspend any license, certificate or permit issued pursuant to this chapter for failure to pay a penalty under this section when that person has failed to pay the penalty within 60 days after the penalty becomes final. (Added 1987, No. 71, § 5; amended 1999, No. 49, § 118; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 1112. Licensing pesticide applicators; pesticide companies; dealers

(a) The secretary may adopt regulations requiring persons selling Class A and B pesticides to be licensed under this chapter. In addition, the secretary may adopt regulations requiring companies which hire applicators or conduct pesticide applications to be licensed, and applicators who use pesticides to be certified under this chapter. The secretary may establish reasonable requirements for obtaining licenses and certificates. The fees for dealers, licensed companies and applicator certificates under this chapter shall be as follows:

(1) Class A Dealer License-\$25.00;

(2) Class B Dealer License-\$25.00;

(3) Pesticide Company License-\$50.00;

(4) Commercial and Noncommercial Applicator Certification fee-\$25.00 per category or subcategory with a maximum of \$100.00;

(5) Second and third time examination fee for dealer licenses and applicator certification-\$25.00.

(b) All license and certification fees shall be for one year or any part thereof for each dealer, licensed pesticide applicator company or certified commercial and noncommercial applicator. The license and certification period shall be January 1 to December 31. The secretary shall exempt federal and state agencies and municipalities and public education institutions from certification and licensing fees. (Added 1999, No. 49, § 119; amended 2001, No. 143 (Adj. Sess.), § 38, eff. June 21, 2002.)

